

Counsel Listed On Signature Block

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE OPTICAL DISK DRIVE
ANTITRUST LITIGATION**

Case No. M:10-cv-02143 VRW

MDL No. 2143

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

[ALL ACTIONS]

**Judge: Hon. Vaughn R. Walker
Date: May 6, 2010
Time: 3:30 p.m.
Courtroom: 6, 17th Floor**

1 Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, and Defendants in the above-
 2 captioned litigation hereby submit this Joint Statement in advance of the May 6, 2010 Case
 3 Management Conference. Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs are
 4 referred to collectively herein as “Plaintiffs.”

5 **1. JURISDICTION AND SERVICE**

6 **a. Subject Matter Jurisdiction**

7 i. Plaintiffs’ Statement

8 Plaintiffs allege price-fixing and other anticompetitive conduct in the market for
 9 Optical Disk Drive Products. All Plaintiffs bring claims under Section 1 of the Sherman Act
 10 (15 U.S.C. § 1). The Direct Purchaser Plaintiffs seek treble damages under Section 4 of the
 11 Clayton Act (15 U.S.C. § 15); Indirect Purchaser Plaintiffs seek injunctive relief under
 12 Section 16 of the Clayton Act (15 U.S.C. § 26). Additionally, Indirect Purchaser Plaintiffs
 13 also bring claims under various state laws, including those of Alabama, Arizona, California,
 14 Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan,
 15 Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North
 16 Dakota, South Dakota, Tennessee, Vermont, and Wisconsin. The Court has subject matter
 17 jurisdiction over the state law claims under 28 U.S.C. §§ 1332(d) and 1367.

18 ii. Defendants’ Statement

19 Defendants reserve the right to challenge subject matter jurisdiction once Defendants
 20 have had a chance to review the allegations in any consolidated complaint(s). For example,
 21 some of the original complaints (which will presumably be superseded pursuant to the MDL
 22 consolidation order) assert claims that do not implicate trade or commerce in the United
 23 States, as is required for subject matter jurisdiction. Thus, this and other potential defects in
 24 subject matter jurisdiction may be at issue, depending on the nature of the consolidated
 25 complaint(s).

26 **b. Personal Jurisdiction**

27 i. Plaintiffs’ Statement

1 Plaintiffs do not believe that there are any personal jurisdiction issues for any of the
2 Defendants.

3 ii. Defendants' Statement

4 Some defendants may contest personal jurisdiction.

5 c. **Service**

6 i. Plaintiffs' Statement

7 Prior to the Judicial Panel on Multidistrict Litigation's (JPML) transfer order, each of
8 the domestic Defendants was served with at least one of the complaints from one of the
9 separate cases. Likewise, Plaintiffs CMP Consulting Services Inc. ("CMP") and Univisions-
10 Crimson Holding, Inc. ("Univisions") served their respective complaints through the Hague
11 Convention on Defendants Hitachi, Ltd., Hitachi-LG Data Storage, Inc., Koninklijke Philips
12 Electronics, Inc., LG Electronics, Inc., Sony Corporation, Sony Optiarc Inc., and Toshiba
13 Corporation, and Toshiba Samsung Storage Technology Corporation. Plaintiffs CMP and
14 Univisions believe they have served through the Hague Convention Samsung Electronics,
15 Co., Ltd (for which counsel has appeared). Additionally, Plaintiff KI, Inc., is in the process of
16 serving through the Hague Convention TEAC Corporation in Japan. Plaintiffs believe that
17 such service constitutes effective service for the now-consolidated case, and these Defendants
18 should be deemed served for purposes of the consolidated complaints that the Direct
19 Purchaser Plaintiffs and Indirect Purchaser Plaintiffs anticipate filing (see Amendment of
20 Pleadings section 5 below). Plaintiffs request that, if any remaining foreign Defendants do
21 not agree to also accept service through their respective counsel, this Court order counsel for
22 the foreign defendants to accept such service. In the event that counsel for the foreign
23 Defendants do not agree to such service and this Court does not enter an order to that effect,
24 Plaintiffs request at least six months to serve each of the foreign Defendants. On January 27,
25 2010, the Court appointed Crowe Foreign Services as an international process server in the
26 case of *Univisions Crimson Holding, Inc. v. Sony Corp., et al.*, No. 09-CV-5186 VRW (N.D.
27 Cal.).

Moreover, Plaintiffs believe that service of foreign defendants through their counsel may be permissible under Fed. R. Civ. P. 4(f)(3). *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2010 WL 133743 at *2-*3 (N.D. Cal. April 2, 2010); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2008 WL 4963035 at *3 (N.D. Cal. Nov. 19, 2008); *In re LDK Solar Antitrust Litig.*, No. C 07-05182 WHA, 2008 WL2415186 at *2-*4 (N.D. Cal. June 12, 2008).

ii. Defendants' Statement

Although some domestic defendants have been served and some foreign defendants have been served through the Hague Convention with at least one complaint, a number of defendants have not been served with any complaints. There is no basis to order counsel for foreign defendants to accept service. *Rio Props. v. Rio Int'l Interlink*, 284 F.3d 1007, 1015 n.4 (9th Cir. 2002) ("A federal court would be prohibited from issuing a Rule 4(f)(3) order in contravention of an international agreement, including the Hague Convention referenced in Rule 4(f)(1)"). There is also no basis to extend service beyond 120 days. *Larson v. Conewango Prods.*, 2010 U.S. Dist. LEXIS 26636 at *6 (E.D. Cal. 2010) (Fed. R. Civ. P. 4(m) only requires the Court to extend service beyond 120 after showing of "good cause"); *Univision Music LLC v. Banyan Entm't*, 2004 U.S. Dist. LEXIS 30951 at *2 (C.D. Cal. 2004) ("The Court will require plaintiffs to show good cause to extend the service deadline beyond 120 days").

2. FACTS

a. Plaintiffs' Statement

These actions arise from an alleged conspiracy to fix the prices of Optical Disk Drive Products, defined as Optical Disk Drives and products containing them. Optical Disk Drives are devices used to read and record information, such as data, music and videos, that are stored on optical discs, including CD-ROMs, CD-recordable/rewritable discs, DVD-ROMs, DVD-recordable/rewritable discs, Blu-Ray discs, Blu-Ray-recordable/rewritable discs and HD-DVD discs. Nearly every computer that is used or sold in the United States today is

1 equipped with an Optical Disk Drive. Defendants and their affiliates are the leading
2 manufacturers of Optical Disk Drive Products.

3 The Direct Purchaser Plaintiffs allege that Defendants' price-fixing conspiracy began
4 as early as January of 2001, and the Indirect Purchaser Plaintiffs allege that Defendants'
5 price-fixing conspiracy began as early as January of 2005.¹ All Plaintiffs allege the price-
6 fixing conspiracy continues to the present and that the conspiracy has been carried out
7 through agreements to fix prices and restrict output and has been facilitated in a variety of
8 ways, including the use of trade associations.

9 Plaintiffs are aware that the following Defendants have been subpoenaed in
10 connection with the United States Department of Justice's ("DOJ") investigation of price-
11 fixing in the Optical Disk Drive Product market: Defendant Sony Optiarc America Inc. (the
12 American subsidiary of Defendant Sony Optiarc Inc.), Defendant Hitachi-LG Data Storage
13 Inc. ("HLDS") (the joint venture of Defendants Hitachi, Ltd. and LG Electronics, Inc.), and
14 Defendant Toshiba Samsung Storage Technology Corp. (the joint venture of Defendants
15 Toshiba Corp. and Samsung Electronics Co., Ltd.). Additionally, Defendant Koninklijke
16 Philips Electronics N.V. has just recently acknowledged that Philips Lite-On Digital Solutions
17 Corp. ("PLDS") (its joint venture with Lite-On IT Corporation) is also part of that DOJ
18 investigation.

19 The Direct Purchaser class is defined consistently with the scope of the direct
20 purchaser class certified in the TFT-LCD antitrust litigation, where purchasers of certain
21 finished products containing price-fixed panels from the defendants were included. *See In re*
22 *TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2010 WL 1417896 at *12-*13
23 (N.D. Cal. March 28, 2010). The Indirect Purchaser class is defined consistently with the
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26 ¹ Some Direct Purchaser complaints allege these commencement periods, while others assert
27 that the conspiracy commenced at various other times in 2005. These differences will be
28 addressed in the Direct Purchaser Consolidated Complaint and the Indirect Purchaser
Consolidated Complaint.

indirect purchaser class defined in *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2010 WL 1286478 (N.D. Cal. March 28, 2010).

Plaintiffs also believe that the allegations of any Consolidated Amended Complaints will pass muster under the applicable caselaw construing Fed. R. Civ. P. 12(b)(6). *See In re Flash Memory Antitrust Litig.*, 643 F.Supp.2d 1143 (N.D. Cal. 2009); *In re Tableware Antitrust Litig.*, 363 F.Supp.2d 1203 (N.D. Cal. 2005).

b. Defendants' Statement

There are currently over two dozen complaints containing a wide-ranging variety of allegations pending before the Court. Plaintiffs have not yet asked the Court to approve proposed lead counsel, and no consolidated complaint has been filed. It is premature for Defendants to respond to Plaintiffs' characterizations of the allegations, given that consolidated complaint(s) have not yet been filed. The original complaints – none of which have been responded to or otherwise answered by any defendants – are not identical, and, in fact, vary in substantive respects. For example, as Plaintiffs themselves note in FN 1, the original complaints allege different time periods, which will apparently be addressed in consolidated complaint(s). Similarly, some complaints purportedly on behalf of a putative “direct purchaser” class define the relevant products as including “products *containing* Optical Disk Drives,” a definition that appears to sweep in indirect purchasers. (emphasis added.) Until such substantive differences have been resolved in consolidated complaint(s), it is premature to respond to the allegations.

In any event, based on the nature of the allegations in the complaints filed to date, Defendants anticipate challenging the sufficiency of the consolidated complaint(s) based, inter alia, on the Plaintiffs' failure to plead facts sufficient to establish conspiracy under *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

3. LEGAL ISSUES

a. Plaintiffs' Statement

Plaintiffs believe the primary legal issues are:

- 1 i. Whether the classes of persons and entities who purchased Optical Disk
- 2 Drive Products from Defendants should be certified;
- 3 ii. Whether the conduct of Defendants that is allegedly unlawful under the
- 4 Sherman Act (or in the case of Indirect Purchasers, under the laws of
- 5 various states) caused prices of Optical Disk Drive Products in the
- 6 United States to be artificially high and at anti-competitive levels; and
- 7 iii. Whether Plaintiffs and other members of the respective classes were
- 8 injured by the alleged unlawful conduct of Defendants and, if so, the
- 9 appropriate class-wide measure of damages.

10 b. Defendants' Statement

11 Absent consolidated complaint(s), it is premature, inefficient and unnecessary to

12 speculate on legal issues that may or may not exist in this consolidated litigation.

13 **4. MOTIONS**

14 a. Plaintiffs' Statement

15 No motions other than motions to relate cases, and *pro hac vice* motions, motions for

16 extension of time, and the international process server motion described above have been

17 filed. Direct Purchaser Plaintiffs propose to the Court a structure for the organization of

18 Direct Purchaser Plaintiffs' counsel similar to what was done in *In re Tableware Antitrust*

19 *Litig.*, No. C-04-3514-VRW (N.D. Cal.). The proposed order approving such a structure is

20 attached as Exhibit B. It has the unanimous support of all Direct Purchaser Plaintiffs. A

21 majority of the Indirect Purchaser Plaintiffs will be submitting to the Court a similar proposal,

22 which has the support of 17 of the law firms who have filed actions on behalf of Indirect

23 Purchaser Plaintiffs. Another group of Indirect Purchaser Plaintiffs (comprising 18 of the 37

24 indirect purchaser plaintiffs who have filed claims) will be submitting to the Court a similar

25 but alternative proposal, which has the support of 12 of the law firms who have filed actions

26 on behalf of Indirect Purchaser Plaintiffs. Once the Court appoints interim class counsel, it is

27 then respectfully requested to set a schedule for the filing of a Direct Purchaser Consolidated

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1 Complaint, the filing of an Indirect Purchaser Consolidated Complaint, and the filing of
2 responses thereto as described below.

3 With regard to any motions to dismiss, Plaintiffs propose the following: (a) motions
4 due 45 days after Consolidated Complaints are filed; (b) oppositions due 45 days after
5 motions filed; (c) replies due 30 days after oppositions filed; (d) hearing on or about 14 days
6 after replies filed. *See* Exhibit A, Proposed Case Management Order No. 1.

7 Scheduling of any other motions, such as motions for class certification and summary
8 judgment, should be scheduled at subsequent case management conferences.

9 b. Defendants' Statement

10 With regard to any motions to dismiss, Defendants agree to the briefing schedule
11 proposed by Plaintiffs. Defendants also agree that scheduling of any other motions, such as
12 motions for class certification and summary judgment, should be scheduled at subsequent
13 case management conferences.

14 **5. AMENDMENT OF PLEADINGS**

15 a. Plaintiffs' Statement

16 Plaintiffs believe that a Direct Purchaser Consolidated Complaint and an Indirect
17 Purchaser Consolidated Complaint should be filed, and propose that such complaints be filed
18 at a date set by the Court after its appointment of organizational structures for Plaintiffs'
19 counsel.

20 b. Defendants' Statement

21 Defendants believe that Plaintiffs should file consolidated complaint(s) within 30 days
22 of the appointment of lead counsel.

23 **6. EVIDENCE PRESERVATION**

24 a. Plaintiffs' Statement

25 Plaintiffs believe that all Parties should be ordered to take reasonable steps to
26 implement the preservation of evidence as set forth in Paragraph 16 of the Proposed Case
27 Management Order No. 1. Plaintiffs and Defendants should meet and confer regarding the
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1 terms of a preservation order for this case. Plaintiffs also believe that counsel should exercise
 2 all reasonable efforts to identify and notify parties and non-parties of their duties, including
 3 employees of corporate or institutional parties. *See* “Pretrial Order No. 1” p. 5 (April 30,
 4 2007), in *In re Graphics Processing Units Antitrust Litig.*, No. C 06 7417 WHA (N.D. Cal.)
 5 (“*Counsel is under an obligation to the Court to exercise all reasonable efforts to identify and*
 6 *notify parties and non-parties, including employees of corporate or institutional parties.*”);
 7 emphasizes in original.

8 b. Defendants’ Statement

9 Defendants will comply with their preservation obligations under the Federal Rules of
 10 Civil Procedure and the Local Rules and trust that Plaintiffs will do the same.

11 **7. DISCLOSURES**

12 a. Plaintiffs’ Statement

13 Plaintiffs believe all Initial Disclosures should be made on or before June 4, 2010, and
 14 that as part of their initial disclosures, defendants should provide the documents produced to
 15 the United States Department of Justice in connection with its investigation into Optical Disk
 16 Drives and/or the Optical Disk Drive Product Market. Production of this category of
 17 documents was ordered in the “Supplemental Case Management Order No. 1” (June 21, 2007)
 18 entered in *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. M 07-cv1819
 19 CW (N.D. Cal.) (“SRAM”) and in the “Stipulation And Order Limiting the Scope of
 20 Discovery” (April 15, 2003) entered in *In re Dynamic Random Access (DRAM) Antitrust*
 21 *Litigation*, No. M-02-1486 (PJH) (N.D. Cal.) . Courts in this district have rejected the notion
 22 that *Twombly* in and of itself justifies any stay of discovery. *See In re Flash Memory Antitrust*
 23 *Litigation*, Case No. C 07-0086 SBA, 2008 WL 62278 at *3 (N.D. Cal., Jan. 4, 2008); *In re*
 24 *Graphics Processing Units Antitrust Litig.*, No. C 06-07417 WHA, MDL No. 1826, 2007 WL
 25 2127577 at *4 (N.D. Cal. July 24, 2007); Transcript of June 1, 2007 Case Management
 26 Conference in *SRAM* at p. 7.

27 b. Defendants’ Statement

1 In complex antitrust cases, courts in the Northern District of California, consistent
 2 with the Supreme Court's ruling in *Twombly*, 550 U.S. at 558, have refused to allow plaintiffs
 3 to obtain discovery prior to either: (1) the conduct of a Rule 26(f) conference; (2) the filing of
 4 an operative complaint or (3) the testing of the viability of that complaint through a motion to
 5 dismiss. *In re Flash Memory Antitrust Litigation*, Case No. C 07-0086 SBA, 2008 WL 62278
 6 at *5 (N.D. Cal., Jan. 4, 2008) (Judge Armstrong's denial of plaintiffs' request for all
 7 documents produced to the Department of Justice prior to filing their amended consolidated
 8 complaints because "[d]iscovery in the absence of any operative pleading . . . does not fit
 9 easily within the framework established by the Federal Rules"); *In re Graphics Processing*
 10 *Units Antitrust Litigation*, Case No. C 06-07417 WHA, 2007 WL 2127577 at *5 (N.D. Cal.,
 11 July 24, 2007) (Judge Alsup's grant of defendants' motion to stay discovery prior to the
 12 resolution of their motions to dismiss as the "better course": "After full ventilation of the
 13 viability *vel non* of the complaint, we will all be in a much better position to evaluate how
 14 much, if any, discovery to allow."). *See also* Manual for Complex Litigation §§ 11.12-13 (it
 15 is often appropriate to defer disclosures in a complex case). Moreover, there is no operative
 16 complaint on file here, nor do plaintiffs apparently expect to file one for some time. "[W]ith
 17 no operative complaint at this time, there are no claims by which relevance of requested
 18 discovery may be measured." *In re Flash Memory*, 2008 WL 62278 at *4.

19 Accordingly, initial disclosures and any other substantive discovery should not take
 20 place until resolution of any motions to dismiss the consolidated complaint(s).

21 **8. DISCOVERY**

22 a. Plaintiffs' Statement

23 Plaintiffs seek production of: (1) the documents each Defendant produced to the DOJ
 24 pursuant to any subpoena relating to the investigation of Optical Disk Drives and/or the
 25 Optical Disk Drive Product market; (2) any such subpoena; and (3) any correspondence
 26 regarding the scope of production pursuant to such subpoena and describing what documents
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1 were produced pursuant to the subpoena. If Defendants do not agree to such production,
2 Plaintiffs request an order from this Court requiring such production.

3 Plaintiffs anticipate making an initial discovery request for production of transactional
4 data for sales of Optical Disk Drive Products, and will thereafter propound additional
5 discovery relating to both the merits of these cases and class certification.

6 A proposal concerning a protective order is set forth in paragraph 29 of Exhibit A,
7 Proposed Case Management Order No. 1.

8 b. Defendants' Statement

9 As indicated above (§7(b)), discovery is premature prior to the resolution of motions
10 to dismiss any consolidated complaint(s).

11 **9. CLASS ACTIONS**

12 a. Plaintiffs' Statement

13 The Direct and Indirect Purchaser Class Actions are brought as class actions.
14 Plaintiffs anticipate filing motions for class certification.

15 b. Defendants' Statement

16 Defendants expect to oppose any motions for class certification.

17 **10. RELATED CASES**

18 a. Plaintiffs' Statement

19 By order dated April 2, 2010, the JPML transferred all related Optical Disk Drive
20 Products cases to this Court for coordination and/or consolidation of pretrial proceedings.
21 The cases pending before this Court are set forth as an Exhibit to Proposed Case Management
22 Order No. 1 attached as Exhibit A.

23 b. Defendants' Statement

24 Defendants agree.

25 **11. RELIEF**

26 a. Plaintiffs' Statement

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1 Plaintiffs seek money damages, including treble damages, for alleged violations of the
2 antitrust laws and injunctive relief against alleged continued illegal practices.

3 Indirect Purchaser Plaintiffs seek injunctive relief under Section 16 of the Clayton Act
4 (15 U.S.C. § 26) for violation of Section 1 of the Sherman Act (15 U.S.C. § 1). Additionally,
5 Indirect Purchaser Plaintiffs seek monetary damages pursuant to various state-law antitrust
6 damage actions, as well as equitable relief, including restitution and disgorgement, under
7 various state-law consumer-protection and unjust-enrichment statutes.

8 b. Defendants' Statement

9 Defendants deny that Plaintiffs are entitled to any of the relief sought.

10 **12. SETTLEMENT AND ADR**

11 a. Plaintiffs' Statement

12 No settlement discussions have occurred. Plaintiffs, however, do not object to
13 engaging in early settlement discussions.

14 b. Defendants' Statement

15 Defendants believe that settlement discussions are premature at this time.

16 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

17 The Parties do not consent to have a magistrate judge conduct all further proceedings
18 including trial.

19 **14. OTHER REFERENCES**

20 a. Plaintiffs' Statement

21 Plaintiffs are willing to have a magistrate judge appointed to address potential
22 discovery disputes.

23 b. Defendants' Statement

24 It is premature and inefficient to address discovery before the Court has resolved
25 motions to dismiss any consolidated complaint(s). If any consolidated complaint survives
26 Defendants' motions to dismiss and discovery proceeds, the parties should meet and confer in
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1 an effort to identify the most appropriate and efficient way to resolve potential discovery
2 disputes.

3 **15. NARROWING OF ISSUES**

4 a. Plaintiffs' Statement

5 Plaintiffs believe it is premature to consider the narrowing of issues at this time.

6 b. Defendants' Statement

7 Absent consolidated complaint(s), there are no issues to narrow, and thus Defendants
8 agree that it is premature to consider narrowing the issues.

9 **16. EXPEDITED SCHEDULE**

10 a. Plaintiffs' Statement

11 Plaintiffs do not believe that these actions are susceptible to an expedited schedule.

12 b. Defendants' Statement

13 Defendants agree.

14 **17. SCHEDULING AND TRIAL**

15 a. Plaintiffs' Statement

16 Plaintiffs propose that the Court schedule another Case Management Conference
17 shortly after the Court rules on motions to dismiss, if any. At that time, the Parties will have
18 had further time to conduct discovery and will be in a better position to propose a
19 comprehensive case management schedule through trial.

20 b. Defendants' Statement

21 If any aspect of these cases survives Defendants' motions to dismiss, the Court should
22 schedule another Case Management Conference shortly after ruling on those motions in order
23 to initiate and set a discovery schedule and a comprehensive case management schedule.

24 **18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

25 The parties are in the process of filing their "Certification of Interested Entities or
26 Persons" as required by Civil Local Rule 3-16. The following parties have filed such
27 certificates: Plaintiffs CMP Consulting Services, Inc., Amber Nikkel, Univisions-Crimon
28

1 Holding, Inc., Diana Saed, KI, Inc., Patrick Keyes, Prisco Electric Company, Inc., JLK
2 Systems Group, Inc., Matthew Slavin, and Defendant TEAC America.

3 **19. OTHER MATTERS**

4 a. Plaintiffs' Statement

5 The DOJ has advised Plaintiffs that it will seek to intervene and obtain a limited stay
6 of discovery in this matter. Plaintiffs have advised the DOJ that they do not oppose its request
7 to intervene.

8 b. Defendants' Statement

9 As explained above, any discovery before the resolution of the motions to dismiss the
10 consolidated complaints would be premature. The Department's views can be elicited as
11 appropriate at that time.

12 **20. CASE MANAGEMENT ORDER**

13 The Parties have attached as Exhibit A to this statement a Proposed Case Management
14 Order. The Parties have reached agreement on all the elements of the proposed Order except
15 amendment of pleadings, disclosures, and discovery. Their respective positions on these
16 issues are set forth in Paragraphs 5, 7 and 8 above. The Proposed Order contains the Parties'
17 separate proposals as to those issues.

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1 Dated: April 29, 2010

Respectfully submitted,

2 **MEMBERS OF THE PROPOSED**
3 **COMMITTEE OF DIRECT PURCHASER**
4 **PLAINTIFFS**

5 By: /s/ Guido Saveri

SAVERI & SAVERI, INC.

Guido Saveri

R. Alexander Saveri

Cadio Zirpoli

706 Sansome Street

San Francisco, CA 94111

Tel: 415-217-6810

Fax: 415-217-6813

guido@saveri.com

rick@saveri.com

cadio@saveri.com

Attorneys for Prisco Electric Company d/b/a

Prisco T.V. & Appliance and Warren S. Herman

14 By: /s/ Joseph W. Cotchett

COTCHETT, PITRE & McCARTHY

Joseph W. Cotchett

Steven N. Williams

Aron K. Liang

840 Malcolm Road

Suite 200

Burlingame, CA 94010

Tel: 650-697-6000

Fax: 650-697-0577

jcotchett@cpmlegal.com

swilliams@cpmlegal.com

aliang@cpmlegal.com

Attorneys for Prisco Electric Company d/b/a

Prisco T.V. & Appliance

1
2
3
4
5
6
7
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By: /s/ Michael P. Lehmann

HAUSFELD LLP
Michael P. Lehmann
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Tel: 415-633-1909
Fax: 415-358-4980
mlehmann@hausfeldllp.com

Michael D. Hausfeld
Hausfeld LLP
1700 K Street, NW Suite 650
Washington, D.C. 20006
Tel: 202-540-7200
Fax: 202-540-7201
mhausfeld@hausfeldllp.com

Steig D. Olson
Hausfeld LLP
11 Broadway, Suite 615
New York, NY 10004
Tel: 212-830-9850
Fax: 212-480-8560
solson@hausfeldllp.com

*Attorneys for Matthew Slavin and JLK Systems
Group, Inc.*

By: /s/ Linda Fong

KAPLAN FOX & KILSHEIMER LLP
Laurence D. King
Linda Fong
350 Sansome Street, Suite 400
San Francisco, CA 94104
Tel: 415-772-4700
Fax: 415-772-4707
lking@kaplanfox.com
lfong@kaplanfox.com

Robert Kaplan
Linda Phyllis Nussbaum
Jason Allen Zweig
Susan Schwaiger
Kaplan Fox & Kilsheimer LLP

1 850 Third Avenue, 14th Floor
2 New York, NY 10022
3 Tel: 212-687-1980
4 Fax: 212-687-7714
5 rkaplan@kaplanfox.com
6 lnussbaum@kaplanfox.com
7 sschwaiger@kaplanfox.com
8 jzweig@kaplanfox.com

6 Gary Laurence Specks
7 Kaplan Fox & Kilsheimer LLP
8 423 Sumac Road
9 Highland Park, IL 6003
10 Tel: 847-831-1585
11 Fax: 847-831-1580
12 gspecks@kaplanfox.com

*Attorneys for CMP Consulting Services, Inc., KI,
Inc., and Warren S. Herman*

13 By: /s/ Bruce L. Simon

14 PEARSON SIMON WARSHAW & PENNY LLP
15 Bruce L. Simon
16 44 Montgomery Street
17 Suite 2450
18 San Francisco, CA 94104
19 Tel: 415-433-9000
20 Fax: 415-433-9008
21 bsimon@pswplaw.com

Attorneys for JLK Systems Group, Inc.

22 By: /s/ Christopher T. Heffelfinger

23 BERMAN DeVALERIO
24 Todd A. Seaver
25 Christopher T. Heffelfinger
26 Joseph J. Tobacco Jr.
27 Matthew W. Ruan
28 One California Street, Suite 900
San Francisco, CA 94111
Tel: 415-433-3200
Fax: 415-433-6382
cheffelfinger@bermandevalerio.com
jtabacco@bermandevalerio.com

Daniel Bushell
Mauel Juan Dominguez
Mark J. Greenspon
Berman DeValerio
4280 Professional Center Drive
Suite 350
Palm Beach Gardens, FL 33410
Tel: 415-433-3200
Fax: 415-433-6382
mdominguez@bermandevalerio.com
mgreenspon@bermanesq.com

*Attorneys for Univisions-Crimson Holding, Inc.,
Amber Nikkel and Patrick Keyes*

By: /s/ Joseph R. Saveri

LIEFF CABRASER HEIMANN &
BERNSTEIN LLP
Joseph Richard Saveri
Eric B. Fastiff
Andrew Scirica Kingsdale
Brendan Patrick Glackin
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008
jsaveri@lchb.com
efastiff@lchb.com
akingsdale@lchb.com
bglackin@lchb.com

Attorneys for Alec Berezin and The Stereo Shop

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1 Dated: April 29, 2010

Respectfully submitted,

2 **ATTORNEYS FOR INDIRECT**
3 **PURCHASER PLAINTIFFS**

4 By: /s/ Michael A. Bowse

BROWNE WOODS GEORGE, LLP
Michael A. Bowse (189659)
Eric Marc George (166403)
Lee Weiss (Pro Hac Vice Motion Pending)
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067

8 *Attorneys for Plaintiff Michael's Company*

10 By: /s/ Josef D. Cooper

11 COOPER & KIRKHAM, P.C.
Josef D. Cooper
Tracy R. Kirkham
John D. Bogdanov
357 Tehama St., Second Floor
San Francisco, CA 94103
Telephone: (415) 788-3030
Facsimile: (415) 882-7040
jdc@coopkirk.com
trk@coopkirk.com
jdb@coopkirk.com

18 *Attorneys for Tina Corse*

19 By: /s/ Daniel C. Girard

20 GIRARD GIBBS, LLP
Daniel C. Girard (114826)
Elizabeth C. Pritzker (146267)
601 California Street, Suite 1400
San Francisco, CA 94104

24 *Attorneys for Plaintiff David Carney, Jr.*

1
2
3
4
5
6
7
8
9
10
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25
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28

By: /s/ Thomas V. Girardi

GIRARDI | KEESE

Thomas V. Girardi (36603)

Stephen G. Larson (145225)

Shahram A. Shayesteh (209775)

1126 Wilshire Boulevard

Los Angeles, CA 90017

*Attorneys for Plaintiffs Christopher Johnson,
Dennis McDavid, Sally O'Donaghue, Murray
Miller and Andrew Crosby*

By: /s/ Daniel Karon

GOLDMAN SCARLATO & KARON, PC

Daniel R. Karon

(Pro Hac Vice Motion Pending)

700 W. St. Clair Avenue, Suite 204

Cleveland, OH 44113-1998

*Attorneys for Plaintiff Scott Friedson, Guy
Snowdy, and Sharon Defren*

By: /s/ Steve W. Berman

HAGENS BERMAN SOBOL SHAPIRO, LLP

Steve W. Berman (Admitted pro hac vice)

Jeffrey D. Friedman (173886)

715 Hearst Avenue, Suite 202

Berkeley, CA 94710

Attorneys for Plaintiff Aaron Wagner

1
2
3
4
5
6
7
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9
10
11
12
13
14
15
16
17
18
19
20
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25
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27
28

By: /s/ Christopher Lovell
LOVELL STEWART HALEBIAN LLP
Christopher Lovell
Craig M. Essenmacher
Keith Essenmacher
61 Broadway, Suite 501
New York, NY 10006
Telephone: (212) 608-1900
Facsimile: (212) 719-4775
clovell@lshllp.com

*Attorneys for Plaintiffs Ann Carney, Craig P.
Kelly, Bonnie Lockwood, Thomas Fennesy and
Justin Austin, III*

By: /s/ Donna F. Solen
MASON LLP
Donna F. Solen
(Pro Hac Vice Motion Pending)
1625 Massachusetts Avenue N.W., Suite 605
Washington, DC 20036

*Attorneys for Plaintiffs Scott Friedson, Guy
Snowdy, and Sharon Defren*

By: /s/ Brad Yamauchi
MINAMI TAMAKI, LLP
Brad Yamauchi (73245)
Jack W. Lee (71626)
360 Post Street, 8th Floor
San Francisco, CA 94108

Attorneys for Plaintiff Bay Area Systems, LLC

1
2 By: /s/ Gilmur R. Murray

MURRAY & HOWARD, LLP
Gilmur Roderick Murray (111856)
Derek G. Howard (118082)
900 Larkspur Landing Circle, Suite 103
Oakland, CA 94939

3
4
5 *Attorneys for Plaintiff Bay Area Systems, LLC*
6

7 By: /s/ Krishna B. Narine

LAW OFFICE OF KRISHNA B. NARINE
Krishna B. Narine
(Pro Hac Vice Motion Pending)
2600 Philmont Avenue, Suite 324
Huntington Valley, PA 19006

8
9
10
11 *Attorneys for Plaintiffs Scott Friedson, Guy*
12 *Snowdy, and Sharon Defren*
13

14 By: /s/ Pierce Henry O'Donnell

O'DONNELL & ASSOCIATES
Pierce Henry O'Donnell (081298)
Robert M. Partain (221477)
800 Wilshire Boulevard, Suite 500
Los Angeles, CA 90017

15
16
17 *Attorneys for Plaintiff Alireza Tabatabai*
18

19 By: /s/ William H. Parish

20 PARISH & SMALL, PLC
William H. Parish
1919 Grand Canal Blvd., Suite A-5
Stockton, CA 95207
Telephone: (209) 952-1992
Facsimile: (209) 952-0250
whparish@parishsmall.com

21
22
23
24 *Attorneys for Cullen Byrne*
25
26
27
28

1
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9
10
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13
14
15
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23
24
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26
27
28

By: /s/ Robert J. Prata

PRATA & DALEY, LLP
Robert J. Prata (162600)
Todd A. Daley (168742)
Cassandra J. Zappaterreno (208798)
515 South Figueroa Street, Suite 1515
Los Angeles, CA 90071

Attorneys for Plaintiff Tom Daley

By: /s/ Michael F. Ram

RAM & OLSON, LLP
Michael F. Ram (104805)
555 Montgomery Street, Suite 820
San Francisco, CA 94111

*Attorneys for Plaintiffs Scott Friedson, Guy
Snowdy, and Sharon Defren*

By: /s/ Julio J. Ramos

LAW OFFICES OF JULIO J. RAMOS
Julio J. Ramos (189944)
35 Grove Street, Suite 107
San Francisco, CA 94102

*Attorneys for Plaintiff Don Cheung d/b/a
Computer 5000*

By: /s/ Peter Rukin

RUKIN HYLAND DORIA & TINDALL, LLP
Peter Rukin (178336)
100 Pine Street, Suite 725
San Francisco, CA 94111

Attorneys for Plaintiff James P. Ito-Adler

1
2
3
4
5
6
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18
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27
28

By: /s/ Thomas G. Shapiro
SHAPIRO HABER & UMY, LLP
Thomas G. Shapiro
(Pro Hac Vice Motion Pending)
Charles T. Tompkins
(Pro Hac Vice Motion Pending)
Robert E. Ditzion
(Pro Hac Vice Motion Pending)
53 State Street
Boston, MA 02109

Attorneys for Plaintiff James P. Ito-Adler

By: /s/ Isaac L. Diel
SHARP McQUEEN PA
Isaac L. Diel (Pro Hac Vice Motion Pending)
6900 College Blvd., Suite 285
Overland Park, KS 66223

*Attorneys for Plaintiffs Scott Friedson, Guy
Snowdy, and Sharon Defren*

By: /s/ Mario N. Alioto
TRUMP, ALIOTO, TRUMP & PRESCOTT, LLP
Mario N. Alioto
2280 Union Street
San Francisco, CA 94123
Telephone: (415) 563-7200
Facsimile: (415) 346-0679
malimoto@tatp.com

*Attorneys for Gregory Sinigiani, Aimee Brock,
Williams Craig Stephenson, Raymond F. Barbush,
Sidney Plitnik, Cynthia Saia, Geoffrey Korwan,
Patrick Piper, Daniel Riebow, Frank Warner and
Christopher Smith*

1
2 By: /s/ Casey A. Hatton

3 WILKES & McHUGH

4 Casey A. Hatton (246081)

5 3780 Kilroy Airport Way, Suite 220

6 Long Beach, CA 90806

7
8 *Attorneys for Plaintiffs Mary Jane Garland, Laura
9 Allen, V. Carlos Palmeri, M.D., and Thomas Lewis*

10 By: /s/ Francis O. Scarpulla

11 ZELLE HOFMANN VOELBEL & MASON LLP

12 Francis O. Scarpulla

13 Craig C. Corbitt

14 Christopher T. Micheletti

15 Judith A. Zahid

16 Patrick B. Clayton

17 Qianwei Fu

18 44 Montgomery Street, Suite 3400

19 San Francisco, CA 94104

20 Telephone: (415) 693-0700

21 Facsimile: (415) 693-0770

22 fscarpulla@zelle.com

23 *Attorneys for Plaintiffs Ann Carney, Craig P.
24 Kelly, Bonnie Lockwood, Thomas Fennesy and
25 Justin Austin, III*

26 Dated: April 29, 2010

27 Respectfully submitted,

28 **ATTORNEYS FOR DEFENDANTS**

By: /s/ Thomas Brown

Thomas Brown

O'MELVENY & MYERS LLP

Two Embarcadero Center, 28th Floor

San Francisco, CA 94111-3823

Telephone: (415) 984-8700

Facsimile: (415) 984-8701

Email: tbrown@omm.com

1 Ian Simmons
2 (Admitted Pro Hac Vice)
3 O'MELVENY & MYERS LLP
4 1625 Eye St. NW
5 Washington, D.C. 20006
6 Telephone: (202) 383-5300
7 Facsimile: (202) 383-5414
8 Email: isimmons@omm.com

Attorneys for Defendant Samsung Electronics Co., Ltd.

9 By: /s/ Christopher B. Hockett

10 Christopher B. Hockett (Bar No. 121539)
11 Neal A. Potischman (Bar No. 254862)
12 Sandra D. West (Bar No. 250389)
13 Jeremy M. Brodsky (Bar No. 257674)
14 DAVIS POLK & WARDWELL LLP
15 1600 El Camino Real
16 Menlo Park, California 94025
17 Telephone: (650) 752-2000
18 Facsimile: (650) 752-2111
19 christopher.hockett@davispolk.com
20 neal.potischman@davispolk.com
21 sandra.west@davispolk.com
22 jeremy.brodsky@davispolk.com

Attorneys for Defendant LG Electronics, Inc.

23 By: /s/ Belinda S. Lee

24 Daniel M. Wall
25 Belinda S. Lee
26 Casandra Thomson
27 Latham & Watkins LLP
28 505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Tel: +1.415.391.0600
Fax: +1.415.395.8095

Attorneys for Defendants Toshiba Corporation and Toshiba Samsung Storage Technology Corporation

1
2 By: /s/ James G. Kress

3 James G. Kress
4 Andrew D. Lazerow
5 HOWREY LLP
6 1299 Pennsylvania Ave NW
7 Washington, DC 20004-2402
8 Telephone: 202.783.0800
9 Facsimile: 202.383.6610
10 Email: kressj@howrey.com
11 Email: lazerowa@howrey.com

12 *Attorneys for Defendants Koninklijke Philips*
13 *Electronics N.V. and Philips Lite-On Digital*
14 *Systems, U.S.A.*

15 By: /s/ John F. Cove

16 John F. Cove, Jr. (State Bar No. 212213)
17 Steven C. Holtzman (State Bar No. 144177)
18 Beko O. Reblitz-Richardson
19 (State Bar No. 238027)
20 BOIES, SCHILLER & FLEXNER LLP
21 1999 Harrison Street, Suite 900
22 Oakland, California 94612
23 Telephone: (510) 874-1000
24 Facsimile: (510) 874-1460
25 E-mail: jcove@bsflp.com
26 sholtzman@bsflp.com
27 brichardson@bsflp.com

28 *Attorneys for Defendant Sony Optiarc America,*
Inc.

By: /s/ David H. Bamberger

David H. Bamberger (admitted pro hac vice)
Deana L. Cairo (admitted pro hac vice)
DLA PIPER LLP (US)
500 8th Street, N.W.
Washington, D.C. 20004
Phone: (202) 799-4000
Fax: (202) 799-5000
Email: david.bamberger@dlapiper.com
deana.cairo@dlapiper.com

1 Paolo Morante (admitted pro hac vice)
2 DLA PIPER LLP (US)
3 1251 Avenue of the Americas
4 New York, NY 10020
5 Phone: (212) 335-4500
6 Fax: (212) 335-4501
7 Email: paolo.morante@dlapiper.com

8 Erin Frazor (Bar No. 251324)
9 DLA PIPER LLP (US)
10 555 Mission Street, Suite 2400
11 San Francisco, CA 94105
12 Phone: (415) 836-2500
13 Fax: (415) 836-2501
14 E-mail: erin.frazor@dlapiper.com

15 *Attorneys for Defendant TEAC America, Inc.*

16 **ATTESTATION OF FILING**

17 Pursuant to N.D. Cal. General Order No. 45, section 45 X(B), I hereby attest that
18 concurrence in the filing of this document has been properly obtained.
19

20 /s/ Neil Swartzberg
21 Neil Swartzberg
22
23
24
25
26
27
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